

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA TEACHERS RETIREMENT ASSOCIATION

Elwin Leverington,

Plaintiff,

FACT,

V.

Teachers Retirement Association,

Defendant.

FINDINGS QF

CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 9:00 a.m. on Tuesday, July 21, 1987, in the Office of the Teachers Retirement Association, Suite 500, Gallery Building, 17 West Exchange Street, St. Paul, Minnesota. The transcript on this matter was filed on August 7, 1987, at which time the record was closed pursuant to the stipulation of both parties.

Elwin Leverington, Route 2, Roseau, Minnesota 56751, the Petitioner herein, appeared and testified on his own behalf. Merwin Peterson, Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Teachers Retirement Association.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Teachers Retirement Association shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Association. Exceptions to this Report, if any, shall be filed with Elton Erdahl, Executive Director, Teachers Retirement Association, Suite 500, Gallery Building, 17 West Exchange Street, St. Paul, Minnesota 55102.

STATEMENT OF ISSUE

The purpose of this hearing is to determine the date on which Mr. Leverington mailed his application for retirement to the Teachers Retirement Association pursuant to 1987 Laws, ch. 372, art. 7, 2.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Elwin Leverington, a resident of Roseau, Minnesota, retired after 32 years of teaching on June 30, 1982. Prior to that retirement date, Mr.

Leverington was informed by the Teachers Retirement Association that he could "buy back" one year of service for the amount of \$7,080.70 if that payment was made by June 30, 1982. Mr. Leverington mailed a check by certified mail for that amount made payable on June 30, 1982 to the Association on June 28, 1982. The Association received the check on July 1, 1982 and issued a receipt bearing that date.'

2. Mr. Leverington's "Application for Retirement Annuity" is dated July 1, 1982 and was mailed in an envelope bearing a July 1, p.m. postmark. The return addressee on the envelope was the North Star Vocational Cooperative Center in Roseau. The envelope also contained an "Affidavit of School Authorities" and a letter from ISD No. 682 concerning Mr. Leverington's earnings as a bus driver which was dated June 29, 1982. The Application, the Affidavit of School Authorities, and the June 29 letter are all stamped received on July 6, 1982 by the Teachers Retirement Association.

3. The Judge specifically finds that Mr. Leverington mailed the Application for Retirement on July 1, 1982.

4. Mail normally takes three days to get to an addressee in the Twin Cities from Roseau.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Teachers Retirement Association have jurisdiction over this matter pursuant to 1987 Laws, ch. 372, art. 7, 2 and Minn. Stat. 14.50 (1986). The Notice and Order for Hearing was proper in all respects as to form and content.

2. Mr. Leverington, the Petitioner herein, has the burden to prove the mailing date of the Application for Retirement by a preponderance of the evidence.

3. As the Findings of Fact above show, the Judge has found that Mr. Leverington's Application for Retirement was mailed to the Teachers Retirement Association on July 1, 1982.

4. The Conclusions above are made for the reasons set forth in the Memorandum below which is incorporated by reference herein.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

I July 1, 1982 was a Thursday. Consequently, the holiday, July 4, was on

a Sunday. The Association's office was closed on Monday, July 5, 1982.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Teachers Retirement Association find that Mr. Leverington's Application for Retirement was mailed on July 1, 1982.

Dated this 11th day of August, 1987.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, Transcript Prepared by Jeffrey J. Watczak.

MEMORANDUM

It is not completely clear that the Legislature intended that the Teachers Retirement Association make the final decision in this matter concerning the "Finding of Fact" regarding the mailing date of the Application for Retirement. The authorizing statute states that Mr. Leverington's retirement benefits will be changed "if the administrative hearing . . . results in a finding of fact that the annuitant . . . mailed the application for retirement to the Teachers Retirement Association on or before June 30, 1982." The statutory language does not refer to a "final decision" by the Teachers Retirement Association; rather, it refers to a "finding of fact". This language might be interpreted to mean that the Administrative Law Judge's "Finding" is the final decision in this matter. However, because the Legislature directed the Teachers Retirement Association to initiate an "administrative hearing" pursuant to chapter 14, and initiating agencies have final decisionmaking power unless specifically provided otherwise, the Judge has determined that the Association has final decisionmaking authority in this matter.

Mr. Leverington contends that: (1) he mailed the Application for Retirement with his "buy back" check which was received by the Association on July 1, 1982; or (2) the envelope postmarked July 1 was placed in the mail at the post office on June 30, 1982 but not processed until the next day. The record in this matter does not support Mr. Leverington's first argument, however. In order for the Association to receive the Application for

Retirement on July 1, it would have to have been mailed on June 28, 1982 with the "buy back" check. Mr. Leverington has asserted on many occasions that the Application was completed on June 30, 1982. Additionally, the Application is stamped as received on July 6, 1982, the first work-day after the July 4 holiday. There is no explanation as to why the Application would have sat, unstamped, in the Association's office from July 1 until July 6 if it had

been received along with the check on July 1, 1982. Thus, the Judge does not accept Mr. Leverington's first argument that the Application was mailed and received with the buy back check.

Secondly, Mr. Leverington contends that his Application was placed in the mail along with the other documents contained in the envelope postmarked July 1 late in the day on June 30, 1982. There is a critical flaw to that argument, however. The postmark on the envelope shows a July 1, 1982, p.m. stamp. If the envelope had been placed in the mail late in the day on June 30, it would have been processed the morning of July 1 and had an a.m. stamp, not a p.m. stamp. There is no evidence in the record to suggest that letters mailed after 5:00 p.m. receive a p.m. postmark with the following day's date,

Because Mr. Leverington is a petitioner for benefits, the Judge has placed the burden on him to show by a preponderance of the evidence that his Application for Retirement was mailed on or before June 30, 1982. This burden has not been met by Mr. Leverington. Consequently, the Judge has made the Findings, Conclusions and Recommendation set forth above.

P.C.E.